Brochure 129
Final Edition

Fair Treatment for Foreign Investments

INTERNATIONAL CODE

INTERNATIONAL CHAMBER OF COMMERCE
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International Code of Fair Treatment for Foreign Investments

together with
a Resolution of the I.C.C.
and an Introductory Report
by its Committee on Foreign Investments

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RESOLUTION

adopted by the I.C.C.'s Quebec Congress (June 1949)

THROUGHOUT the post-war years, the International Chamber of Commerce has repeatedly emphasized in its resolutions and reports the vital importance to world recovery of an ample flow of capital both from highly industrialized to less developed areas and from one industrialized area to another.

Inter-governmental lending, valuable as it has been and still is in the emergency period following the war, cannot be more than a temporary expedient, and is in any case incapable of coping adequately with the complexity and multiplicity of change and development in the economic world of to-day. Such lending must be supplemented and progressively replaced by substantial movements of private capital.

But if there is to be a revival of private international investment on a scale sufficient to meet present-day needs, there must first be created a climate of confidence and stability encouraging to the potential investor. The private investor is free to invest or not as he pleases. If the conditions surrounding the investment are unattractive, he will simply refrain from putting up his money or from embarking on the projected venture, and the benefits of the development resulting from the investment will be lost to the capital-importing country.

It is also unquestionably true that the buying and selling of securities would play an outstanding role in the restoration of a sound system of international payments, and this requires an adequate protection of foreign investments.

No doubt the greatest enemy of international investment is political insecurity, whether the threat be war or sudden changes in regime. But there are other formidable obstacles. There is exchange control and inconvertibility of currencies. There are policies of expropriation and nationalization. And there is the mass of laws and regulations discriminating against and thereby discouraging the foreign investor. As long as these obstacles exist, however dire a country's need for funds from abroad, they will not be forthcoming.

As a contribution to the removal of these obstacles, in the interests of development and economic progress in all areas of the world, the I.C.C. instructed its Committee on Foreign Investments to work out in collaboration with its Committee on Foreign Establishments an International Code of Fair Treatment for Foreign Investments. This work has now been completed, and the I.C.C. fully endorses the Code prepared by its Committees. It submits the Code together with the introductory report of its Committee on Foreign Investments to the earnest consideration of individual governments and of the Economic and Social Council of the United Nations and its specialized agencies as a basis for immediate action.

Such action might be taken either unilaterally by domestic legislation, or by bilateral agreement, or by multilateral agreement concluded by groups of countries able and willing to adopt the Code's main provisions. At the same time work should be started under the auspices of the Economic and Social Council or of one of its specialized agencies on the gradual elaboration of a universal convention for adoption and signature at some more auspicious time.

INTRODUCTORY REPORT

of the I.C.C.'s Committee on Foreign Investments

THE great importance attached by the business world to the revival of international capital movements as a means of speeding-up economic development and raising standards of living has led the International Chamber of Commerce to draw up an International Code of Fair Treatment for Foreign Investments. This Code, prepared jointly by its Committees on Foreign Investments and Foreign Establishments is now issued in its final form for consideration by governments and by the Economic and Social Council of the United Nations as well as by public opinion throughout the world. It is presented as a model that might usefully be followed in negotiating bilateral and multilateral treaties open to all-comers and even as a basis for unilateral action by individual governments. Should conditions be unfavourable at present to the universal or even widespread adoption by governments of such a Code, it might be included in more limited agreements open to the participation of governments of like mind.

Investment and Economic Growth

Productive investment is the dynamo which makes the wheels of our modern economy turn faster and faster, thus creating increasingly high living standards for increasingly large numbers of people. What makes productive investment possible is primarily the savings of those who spend on their consumption less than they earn. When confidence prevails, these savings become available to those who have promising prospects of developing new sources of production, building new plants, improving existing ones, or introducing technological advances into farming, mining, and other lines of economic activity.

Like all investment, foreign investment is an important instrument of economic growth. In addition, it tends to spread economic advance throughout the world. If carried out under proper safeguards, it brings to countries which are on a lower level of economic development capital accumulated in countries more economically advanced, while providing the saving public of the latter with an opportunity to use their capital advantageously. The economic development of the less advanced areas creates new markets for their own output and for the production of other areas of the world, thus adding to the total volume of demand throughout the world, creating new opportunities for productive employment and international commerce, and increasing living standards in all countries concerned.

Nor is foreign investment limited to movements of capital from more developed to less developed areas. There is no country in the world that has not scope for further economic growth and, especially under a regime of private enterprise, capital may move at the same time from investors in Country A to investment outlets in Country B, and from investors in Country B to investment outlets in Country A. In prewar days, for

example, British investments were made in the United States at the same time as American investments were made in Great Britain.

A False Antithesis

While economic development is a matter of great concern these days, after the impoverishment and destruction brought about by the Second World War, and in view of the growing desire of large masses of people throughout the world to see their economic lot improved, a constructive approach to this problem has been obscured and the finding of a solution made more difficult by the prevalence of an excessive opposition between the so-called "under-developed" and "developed" countries, and by the unfriendly attitude of many governments to private capital and to private enterprise.

No one would of course deny that large areas of the world are under-developed in the sense of having resources which, if properly utilized, could assure a far higher standard of living of the population of those areas than at the present time. The opposite, however, is far from being true : there is no country in existence of which it could be asserted that it is a fully "developed" country, that is to say that there are no further economic opportunities on its territory for economic growth and better standards of living. This is true in terms both of unutilized natural resources and of prevalent technological conditions. Even countries like the United States or Great Britain could be regarded as "under-developed" by one or another, or by both, of these criteria.

This is really quite obvious and there would be no need to stress it if the contrary point of view had not been so widely accepted in recent years as to influence greatly the work of the United Nations. This is witnessed by the distinction made between under-developed countries and other countries at the London, Geneva and Havana I.T.O. Conferences and again in the Sub-Committee on Economic Development of the Economic and Social Council of the United Nations.

In the interest of economic development and of better living conditions for millions of people, a serious warning must be given against the misleading distinction between "developed" and "under-developed" countries and the unfortunate antagonism it artificially creates. Since all countries are under-developed in one respect or another, there is scope for productive investment in all of them.

It is a matter of real concern to business that prevalent opinion in government circles in many parts of the world, especially where investment funds are most urgently needed, is far from friendly to private capital and to private investment. It must not be forgotten that the economies of countries which have at present a sufficiently abundant supply of capital to allow them to engage in foreign investments are based on private enterprise, and that available investment funds are privately owned. It is true that since the end of the war those countries have been supplying capital to other countries through public channels. The E.C.A. is the most telling example—but the operations of the Export-Import Bank of Washington provide another important set of examples of capital export on a governmental level. In free-enterprise countries, however, such as the United

States, the government is not, to any appreciable extent, owner of investible funds in its own right. The government must obtain capital from the public, through borrowing or through raising taxes, both of which require the public's consent. This means that capital exports from these countries through government channels should be regarded as temporary emergency measures and not as a permanent arrangement. Public opinion in countries like the United States, for example, would not view with favour any permanent substitution of government loans for private investment. On the contrary, public opinion in private-enterprise countries is intent on the maintenance or restoration throughout the world of the principles of private property and free enterprise. It is, therefore, safe to assume that unless conditions favourable to the growth of private foreign investments are re-established in *capital-importing* countries, capital exports by means of government loans will not permanently fill the gap caused by the disappearance of discouraged private foreign investors.

Distrust of Private Investor

The unfriendly attitude adopted by many governments towards private investment, which is a mainspring of economic advance, is evidenced by the investment provisions of the Havana Charter (Articles 11 and 12) as well as by the report issued in December 1947 by the Sub-Commission on Economic Development of the Economic and Employment Commission of the Economic and Social Council of the United Nations (1). The investment provisions of the Havana Charter fall, in the Committee's opinion, far short of what would be necessary to induce confidence and thereby stimulate a renewed flow of private foreign investment. Because of the highly technical nature of these provisions, they are analysed in an appendix to the present report (page 18). The report of the Sub-Commission on Economic Development, however, expresses opinions so fundamentally different from the views held by the I.C.C., that it appears necessary to deal with them here. The following quotation from the Sub-Commission's report is typical :

> "..., the Sub-Commission has noted that in practice the foreign investor has, as a matter of course, been more concerned with profits than with the scientific conservation and utilization of the resources of the country in which he operates his investment; and this is a danger to which the Sub-Commission calls attention.
>
> "Furthermore, experience has proved that direct private investments are accompanied by the dangers of harmful economic and political interference, especially in the case of the dependent and the economically weak countries. The Sub-Commission therefore, agrees that past experience indicates that in the least-developed countries, private or government loans and credits are preferable and should be encouraged instead of direct private investments in view of the special danger of direct foreign investments interfering in the political and economic affairs of those countries." (2).

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(1) United Nations Document ECN.1.47.
(2) Ibid, Part VI, Paragraphs 12 and 13.

With reference to the first of these two paragraphs, it should be observed that the problem of "scientific conservation" of natural resources is a proper field of action for the government of a country. Investors to-day are fully alive to the necessity of conserving national resources and are generally only too ready to cooperate with governments to that end. It is indeed frequently the capital and skill made available by foreign investors which enable far-sighted scientific development of such resources to be undertaken. The fact that the investor is concerned with profit need not cause either concern or alarm; if he were not so concerned he would not invest his capital in the first place.

Political and Economic Interference

The United Nations Report goes on to say that "experience has proved that direct private investments are accompanied by the dangers of harmful economic and political interference". This fails to take into account the fact that private investors have been able to interfere politically in the affairs of the foreign country in which they operated only when they had the support of their own government. The Committee agrees that it is highly improper for a foreign investor to attempt to exercise political influence in the country in which he operates. It wishes to draw attention, however, to the fact that the danger of political interference is far greater in the case of government loans than of private investments. It is the governments that are most likely to use their economic operations as a means of political interference, whilst private investors are concerned with obtaining an economic return for their enterprise and the risks taken. The private investor will want assurances against discrimination or expropriation, but it is the governments that are most frequently impelled to attach *some* "political strings" to their loans. It should also be noted that, nowadays capital-receiving countries are well equipped to guard themselves against the danger of political interference by private investors working on their territory. Indeed, it is the investor who needs protection against arbitrary actions on the part of foreign governments.

The Sub-Commission lumps together in one phrase political and economic interference. Now while political interference is obviously undesirable, it is difficult to see how foreign investments can be made without exercising *some* influence on economic developments in the capital-receiving country. It is not made clear by the U.N. Sub-Commission what is the difference between the unavoidable impact of any important new investment and the kind of "interference in the *economic* affairs" which it regards as undesirable.

Direct Investment versus Loans

Nor could the Committee accept the United Nations Sub-Commission's opinion that in view of the danger of political or economic interference, "private or government loans and credits are preferable and should be encouraged instead of direct private investments". The I.C.C. has, on the contrary, constantly held a view that direct investments are more appropriate for the purpose of economic development than loans. Direct investments, which include the establishment of plants or branches and the

acquisition of wholly or partly owned subsidiaries, present several advantages over loans: (1) they involve the importation not only of financial capital but also of organization, knowledge and technical skill; (2) thereby they become an organic part of the national economy of the country in which the investment is made, and (3) they do not involve problems of servicing and repayment as difficult as those involved in loans. This last point is of particular importance in view of the experience in the realm of international indebtedness in the past thirty years. It might also be worth while pointing out that this experience has discouraged from *lending* abroad many potential investors who would be quite willing to engage in *direct* investments.

The paragraph quoted above from the Sub-Commission's report illustrates—and examples can be multiplied—an all-too prevalent attitude among the governments of some capital-receiving countries which look askance upon the desire of foreign investors to make profits on their investments. It is forgotten that profits are a *necessary* operating characteristic of any economic system in which private enterprise and the price mechanism play an important part. It is safe to say that as long as we have such economic systems there will be concern over profits. Moreover whatever the causal relationships involved might be, most capital available for foreign investment is the result of productive activity of private enterprise and is held in private hands. An attitude hostile to profits can, therefore, only have the effect of discouraging private foreign investments and thereby *all* foreign investments, thus slowing down the process of economic growth in the world.

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By presenting its Draft Code, the I.C.C. wishes to place before the world the views of private business represented by it as to what are, in the long run, reasonable requirements for recreating conditions in which capital and skill will flow across political boundaries to the territories where they can be most advantageously employed. It is also hoped that by presenting this Code, the I.C.C. will help to establish a better appreciation of the role private foreign investments can play in world economic progress.

International Code of Fair Treatment for Foreign Investments

drawn up by the I.C.C.'s Committees on Foreign Investments and Foreign Establishments and approved by the I.C.C.'s Quebec Congress (June 1949)

Preamble

THE High Contracting Parties, desirous of promoting an expanding world economy and convinced that an ample flow of private investments is essential to the economic and industrial growth of their countries and to the welfare of their peoples, decide to establish, by the provision of civil, legal and fiscal safeguards, conditions of fair and non-discriminatory treatment for investments made in their territories by the nationals (physical or legal persons) of the other High Contracting Parties.

Article 1

The High Contracting Parties undertake to give effect to the provisions set out hereafter within their metropolitan and overseas territories as well as within those territories where, either by treaty or by virtue of powers conferred upon them by an international authority acting within the limits of its competence, they are entitled so to do.

Article 2

By the terms of this Treaty the High Contracting Parties agree to apply fair treatment, as hereinafter defined, to investments of any kind made in their territories by the nationals of the other High Contracting Parties, including *inter alia* the following types :

— direct investments in real property, natural resources, commercial, financial, agricultural, industrial or transport enterprises, as well as in public utilities or enterprises connected therewith ;
— equity investments in company shares and similar holdings ;
— credits and advances to private and public borrowers and fixed-interest investments in private and public loans.

Article 3

The High Contracting Parties shall take no discriminatory political, legal or administrative measures designed to hamper investments in their territories by the nationals of the other High Contracting Parties. They shall give to investments originating with the other High Contracting Parties treatment no less favourable than to investments made by their own nationals. In the case, however, of investments immediately concerned with national defence, special conditions may if necessary be imposed.

ARTICLE 4 [1]

No High Contracting Party shall discriminate on grounds of nationality in its legislative or administrative treatment of investments, between the investments made by the nationals of one of the High Contracting Parties and the investments made by the nationals of any other of the High Contracting Parties.

ARTICLE 5

In the territories of each of the High Contracting Parties, the treatment extended to the nationals of the other High Contracting Parties shall be not less favourable than that applied to their own nationals, in respect of the legal and judicial protection of their person, property, rights and interests, and in respect of the acquisition, purchase, sale and assignment of moveable and immoveable property of any kind.

They shall have access to the domestic courts as plaintiff or defendant under the same conditions as nationals and be entitled to appear before the competent administrative authorities for the purpose of safeguarding their rights and interests in accordance with the laws in force on the said territories, such laws being applied without any distinction to their own nationals and those of the other High Contracting Parties.

In all cases they shall have the right to receive reasonable prior notice of any proceedings before such domestic courts or competent administrative authorities.

Should the nationals of one of the High Contracting Parties not enjoy the full benefit of the civil rights generally recognized by the other High Contracting Parties or by international law, the nationals of the other High Contracting Parties shall be entitled to such rights and this protection shall not be denied to them on the ground that a preferential system would thus be established in their favour.

ARTICLE 6 [2]

The High Contracting Parties shall not introduce any legislative or administrative provisions of a discriminatory character placing restrictions on :

— the nationality of the shareholders ;
— the composition of the board of Directors and the choice of the Directors ;
— the selection or introduction into their territories of such administrative, executive and technical officers and staff, not nationals of those territories, as shall be deemed by the enterprises concerned to be requisite for their efficient operation.

In the case, however, of enterprises directly concerned with national defence, special conditions may, if necessary, be imposed.

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(1) This Article is concerned exclusively with legislative or administrative action by governments and is in no way intended to interfere with the negotiation of special terms between investor and investee for any specific investment.

(2) This Article is necessary and important, because before investors are willing to transfer capital to another country for the purpose of establishing and developing an enterprise, they desire to know that the administrative, financial and technical management will be under the direction of those whom they consider to be most suitably qualified without regard to nationality. In addition to the obligation on the High Contracting Parties not to introduce new discriminatory legislation, it is also necessary that the High Contracting Parties endeavour as soon as practicable to withdraw or modify any existing legislative or administrative restrictions of the kind referred to in the Article, which deter the investment of foreign capital.

ARTICLE 7

The High Contracting Parties shall not give less favourable treatment in respect of taxation to the nationals of the other High Contracting Parties than to their own nationals.

ARTICLE 8

In order to eliminate the serious deterrents to the development of foreign investments resulting from double taxation, the High Contracting Parties shall seek to conclude bilateral agreements for the prevention of the double taxation of income, and of capital, estates and successions on the basis of the two Model Bilateral Conventions of London drawn up for that purpose by the League of Nations.

ARTICLE 9

Subject to such restrictions and exceptions as may be authorized under the Agreement of the International Monetary Fund, the High Contracting Parties in whose territories sums have been invested by nationals of the other High Contracting Parties shall allow to such nationals freedom of transfer :

a) of current payments arising out of their investments including *inter-alia* interest, dividends, profits, royalties (derived from enterprises in the case of direct investment) ;

b) of payments of principal, payments in respect of redeemable shares, loan certificates and like securities, as well as payments in respect of amortization of loans and, in the case of direct investments, depreciation ;

c) of all payments necessary for the upkeep and renewal of assets maintained in such territories.

A national of one of the High Contracting Parties owning shares or having interests in the territory of another High Contracting Party shall, in the event of his surrendering for a consideration the rights vested by him in such shares or interests, or in the event of liquidation or reduction of capital, be entitled to transfer, within a reasonable period, the proceeds of such surrender, liquidation or reduction.

All such transfers shall be authorized either in the currency of the creditor or in some other currency agreed upon by the creditor and debtor.

ARTICLE 10

The conditions of transfer defined in Article 9 shall also apply to investments in any public loan or loan guaranteed by a public authority, which shall have been issued in the territory of one of the High Contracting Parties :

a) by another High Contracting Party ;

b) by a public body situated in the territory of another High Contracting Party ;

c) by any other person or body, with the guarantee of another High Contracting Party or of one of its agencies or of the International Bank for Reconstruction and Development.

In the case of such international loans, bondholders of creditor High Contracting Parties shall have the right to appoint representatives in the territories of the debtor High Contracting Parties to defend their interests and endeavour to reach settlement of difficulties that may arise through default of payment or measures of alleged discrimination by private or public bodies. These representatives shall likewise have the right to apply to the competent courts in the event of disputes and, if the courts fail to act within a reasonable period or in the case of unfair treatment not amenable to the jurisdiction of a court, to carry the matter before the International Court of Arbitration for which provision is made in Articles 13 and 14 below.

ARTICLE 11

High Contracting Parties who may decide to take measures for the expropriation or dispossession of private property, involving the transfer of the ownership or management of property belonging in whole or in part to nationals of the other High Contracting Parties either to governmental authorities or to their own nationals, shall apply the following principles :

a) the property of investors who are nationals of the other High Contracting Parties shall in no circumstances be liable to measures of expropriation or dispossession except in accordance with the appropriate legal procedure and with fair compensation according to international law ;

b) any national law enacting expropriation or dispossession of the property of the nationals of another High Contracting Party shall state explicitly the purpose and conditions of such expropriation or dispossession ;

c) the introduction in the territory of one of the High Contracting Parties of a system of exchange control shall not exempt the said High Contracting Party from its obligation to carry out the transfer of the compensation due for expropriation or dispossession ;

d) the basis of the compensation shall be determined before expropriation or dispossession takes place. The compensation shall be payable in cash or in readily marketable securities of an equivalent value. The cash or the proceeds of the sale of the securities shall be freely transferable forthwith at the rates of exchange prevailing at the time of expropriation or dispossession. The transfer shall be in the currency of the foreign creditor, unless otherwise agreed.

ARTICLE 12

The High Contracting Parties shall afford all reasonable facilities to the investors of the other High Contracting Parties to obtain the information required for a correct estimate of economic conditions within their territories as well as information concerning their law and their legal, political and administrative systems.

ARTICLE 13

The High Contracting Parties agree that any differences that may arise between them respecting the interpretation or application of this Convention shall, unless settled within a short and reasonable period by direct negotiation or by any other form of conciliation, be submitted for decision to the International Court of Arbitration in accordance with the procedure laid down in Article 14.

ARTICLE 14

(This Article should contain detailed provisions for the composition and working of the International Court of Arbitration to which all disputes and differences are to be referred under Article 13. The details are, however, left to be worked out by the negotiating governments).

ARTICLE 15

(This Article should contain detailed provisions governing the interpretation of the word "nationals" so as to ensure that that expression shall include not only physical persons but also incorporated or unincorporated associations).

ARTICLE 16

(This Article would contain the customary provisions for entry into force and ratification, the details of which are left to the negotiating governments).

Investment Provisions of the Havana Charter

THE investment provisions of the Havana Charter fall into two parts: the broad principles contained in Articles 11 and 72 and the specific provisions of Article 12. The Committee finds itself in sympathy with the former while considering the latter inadequate and even dangerous.

Under Article 11, par. 1 (*b*), we read :

> "no Member shall take unreasonable or unjustifiable action within its territory injurious to the rights or interests of nationals of other Members in the enterprise, skills, *capital*, arts or technology which they have supplied". (Italics added)

Furthermore, par. 2 provides that :

> "The Organization may, in such collaboration with other inter-governmental organizations as may be appropriate :
>
> *a*) make recommendations for and promote bilateral or multilateral agreements on measures designed :
>
> 1) to assure just and equitable treatment for the enterprise, skills, *capital*, arts and technology brought from one Member country to another ; (Italics added)
>
> .....
>
> *c*) formulate and promote the adoption of a general agreement or statement of principles regarding the conduct, practices and treatment of foreign investment."

This last statement was particularly welcomed by the I.C.C. as opening the way to the adoption of a Code of Fair Treatment along the lines of suggestions presented by the I.C.C. to the Geneva Conference (1). Under Article 72, the Charter provides that the Organization shall have among others, the function :

> "to undertake studies, and, having due regard to the objectives of this Charter and the constitutional and legal systems of Members, make recommendations, and promote bilateral or multilateral agreements concerning measures designed : 1) to assure just and equitable treatment for foreign nationals and enterprises." (2)

The I.C.C. would have been satisfied had the Havana Conference adopted no further provisions in addition to those quoted above. It was Article 12 that gave rise to the I.C.C.'s major apprehensions and criticisms. It is true that, in the form adopted at Havana, this Article represents a substantial improvement over the Geneva text. Even so, it lays private foreign investments open to the danger that arbitrary action on the part of the governments of capital-receiving countries will thereby be legalized. This is due both to certain provisions of that Article and to the absence of certain other provisions.

The following are the provisions of Article 12 to which the I.C.C. took strong exception at Havana, an attitude which this Committee wishes to re-affirm in the present report :

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(1) *Trade and Employment*, Brochure 106, para. 130-131.
(2) Article 72, Par. 1 (*c*) (i).

"1. That Members recognize that :

c) without prejudice to existing international agreements to which Members are parties, a Member has the right :

. . . . . .

ii) to determine whether and to what extent and upon what terms it will allow future foreign investment ;

iii) to prescribe and give effect on just terms to requirements as to the ownership of existing and future investments ;

iv) to prescribe and give effect to other reasonable requirements with respect to existing and future investments."

It is a considerable risk for foreign investors, especially as regards *direct* foreign investments, to be uncertain whether they can freely add to their original investment, thereby making it possible for their enterprise to achieve the kind of organic growth which it would normally have in the absence of governmental interference. Suppose a company is established, its products find a ready market, and the expansion of its plant facilities would be sound business policy, and suppose that the required additional investment is vetoed by the government of that country, or that it is allowed only on extremely onerous terms. The value of the original investment would then be reduced because the organic growth of the enterprise would be arrested. The possibility of not being able to expand a successful enterprise cannot but discourage a potential investor from venturing into foreign territory.

Sub-paragraphs (iii) and (iv) are drafted in such vague and ambiguous language that they may easily become a screen behind which many arbitrary and discriminatory measures can be taken. The Committee is particularly apprehensive about the implications of a provision which gives the government of a country the right to prescribe requirements as to the ownership of existing investments, since this opens the door wide to expropriation and nationalisation. The phrase "just terms" which appears in sub-paragraph (iii) is not defined in the Charter. In the Geneva text there appeared a definition of "just compensation" which the I.C.C. found unacceptable and which was criticized in the I.C.C. report to the Havana Conference (1). The Havana Charter discards the Geneva definition but gives no definition of what is meant by "just terms". The door remains open to uncertainty and controversy and, in particular, to the reappearance, at a future date, of the objectionable meaning included in the Geneva Draft of the Charter.

Sub-paragraph (iv), by using the ambiguous phrase "other reasonable requirements" can also readily become a cloak under which a great variety of undesirable practices may claim legal status.

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(1) "The I.C.C. must dissent from the official commentary appended to paragraph 2 of Article 12 according to which 'a Member's obligation to ensure the payment of just consideration or just compensation to a foreign national (in so far as it is an obligation to make payment in currency) is essentially an obligation to make payment in the local currency of that Member'. The problem of compensation arises especially in the case of foreign investments affected by a nationalization program ; in such a case, it is essential that a guarantee of transfer should accompany the obligation to make just compensation ; under the present interpretation, the foreign investor may find himself, under certain circumstances, owner of a large blocked balance in a possibly depreciating currency. In such a case, the compensation received would not return to him a fair and freely available equivalent of the investment which he had previously made in good faith." (*A Charter for World Trade*, Brochure 124, Par. 47).

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